

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

**Feb 16, 2022**

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOSE MENDOZA-RUELAS (1),  
OSCAR CHAVEZ-GARCIA (2),  
and JOEL CHAVEZ-DURAN (3),

Defendants.

No. 4:21-CR-6028-MKD

PRETRIAL ORDER AND ORDER  
GRANTING MOTION TO  
CONTINUE

**ECF Nos. 103, 104, 106**

On February 14, 2022, the Court conducted an individual pretrial hearing with each Defendant in this case. The individual hearings were necessitated by the limited video-conference capabilities at the jails in which Defendants are currently detained.

With his consent, Jose Mendoza-Ruelas appeared in custody from the Yakima County jail and was represented by Assistant Federal Defenders Nick Mirr and Ben Hernandez and assisted by federal-court certified interpreter Natalia Rivera. With his consent, Oscar Chavez-Garcia appeared in custody from the

1 Spokane County jail and was represented Roger Peven. With his consent, Joel  
2 Chavez-Duran appeared in custody from the Spokane County Jail and was  
3 represented by Adam R. Pechtel and assisted by federal-court certified interpreter  
4 Natalia Rivera. Assistant United States Attorney Stephanie A. Van Marter  
5 appeared on behalf of the United States at each hearing.

6 Before the Court are Defendants Chavez-Duran and Chavez-Garcia's  
7 Motions to Continue Trial, ECF Nos. 103 and 106, and Defendant Mendoza-  
8 Ruelas' Motion to Join in the Motion to Continue. ECF No. 104. Defendants state  
9 a continuance in this matter is necessary to review discovery, investigate the  
10 United States' allegations, and prepare a competent defense. The United States  
11 does not object to a continuance in this matter. The Court has reviewed the file,  
12 has heard from counsel, and is fully informed. This Order memorializes the  
13 Court's oral rulings.

14 The Court finds that, taking into account the exercise of due diligence, a trial  
15 date of March 14, 2022, would deprive defense counsel of adequate time to obtain  
16 and review discovery and conduct effective preparation. 18 U.S.C. §  
17 3161(h)(7)(B)(iv). Therefore, the Court finds that the ends of justice are served by  
18 a continuance in this matter, and further that the ends of justice served by a  
19 continuance outweigh the best interests of the public and Defendants' right to a  
20 speedy trial. 18 U.S.C. § 3161(h)(7)(A).

Accordingly, **IT IS HEREBY ORDERED:**

1. Defendant Mendoza-Ruelas' Motion to Join the Motion to Continue Trial, **ECF No. 104**, is **GRANTED**.

2. Defendant Chavez-Duran's Motion to Continue Trial, joined by Defendant Mendoza-Ruelas, **ECF No. 103**, is **GRANTED**.

3. Defendant Chavez-Garcia's Motion to Continue Trial, **ECF No. 106**, is **GRANTED**.

4. The current trial date of **March 14, 2022** is **STRICKEN** and **RESET** to **May 23, 2022, at 9:00 a.m.**, commencing with a final pretrial conference at **8:30 a.m.** Trial shall take place in **Richland**, Washington.

5. A pretrial conference is set for **May 5, 2022, at 1:30 p.m.** in **Richland**, Washington.

6. Counsel for defense shall notify Defendants of all hearings and ensure their attendance at court.

7. **Local Criminal Rules.** Counsel shall comply with the Eastern District of Washington Local Criminal Rules of Procedure (LCrR), except where specifically modified below or by subsequent Order.

8. **Emailing the Court.** Where this Order requires counsel to email documents to the Court, all documents shall be attached to the email in

1 Microsoft Word (.doc/.docx) or rich-text (.rtf) format. The subject line of  
2 each email shall be formatted as follows:

3 **[Case No.]; [Case Name]; [Title of Document]**

4 (e.g.: 13-cr-9999-MKD; USA v. Doe; Trial Brief)

5 **9. Discovery**

6 **A.** All discovery documents must be Bates-stamped with a unique  
7 identifier and must be produced digitally in a text-searchable  
8 format. The Court will grant relief from this requirement only  
9 in exceptional circumstances, upon motion and good cause  
10 shown.

11 **B.** Production of discovery shall be governed by Local Criminal  
12 Rule 16. *See* LCrR 16.

13 **C.** The Court presumes a request for discovery and disclosure  
14 under Federal Rules of Evidence 404(b), 608(b), and 609,  
15 *Brady v. Maryland*, 373 U.S. 83 (1963), *Giglio v. United States*,  
16 405 U.S. 150 (1972), *United States v. Henthorn*, 931 F.2d 29  
17 (9th Cir. 1991), and their progeny, and as such these items are  
18 ordered disclosed by the deadline set forth in Local Criminal  
19 Rule 16.  
20

1           **D.**     At arraignment or within 14 days thereafter, the United States is  
2                     required to disclose evidence relating to Defendant's guilt or  
3                     punishment that might reasonably be considered favorable to  
4                     the Defendant. *See* LCrR 16(a)(6); *see also Brady*, 373 U.S.  
5                     83; *United States v. Agurs*, 427 U.S. 97 (1976); Fed. R. Crim.  
6                     P. 5(f).<sup>1</sup> This is a continuing duty for newly discovered  
7                     evidence. LCrR 16(c); *see also* ECF Nos. 12, 15.

8           **E.**     Pursuant to Federal Rule of Criminal Procedure 16(d)(2),  
9                     failure to comply may result in an order permitting the  
10                    discovery or inspection; granting a continuance; or any other  
11                    order that is just under the circumstances (including contempt,  
12                    sanctions, referral to a disciplinary authority, dismissal of  
13                    charges, exclusion of evidence or witnesses, and adverse jury  
14                    instructions).

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18     <sup>1</sup> Nothing in this requirement enlarges or diminishes the United States' obligation  
19     to disclose information and evidence to the Defendant under *Brady* and its  
20     progeny.

1           **10. Expert-Witness Summaries**

2           **A.**     When each party produces to opposing counsel summaries of  
3                   its expert-witness testimony for which disclosure is required  
4                   under Federal Rule of Criminal Procedure 16 and Local  
5                   Criminal Rule 16, counsel shall also email an electronic copy of  
6                   the summary to the Court at [DimkeOrders@waed.uscourts.gov](mailto:DimkeOrders@waed.uscourts.gov).

7           **B.**     All summaries of expert witness testimony must conform to  
8                   Federal Rule of Criminal Procedure 16, Local Criminal Rule  
9                   16, and applicable case law interpreting those Rules. The Court  
10                  will not permit an expert witness to testify about opinions  
11                  which are not explicitly expressed in that expert's summary.  
12                  *See, e.g., United States v. W.R. Grace*, 526 F.3d 499 (9th Cir.  
13                  2008).

14          **11. CM/ECF Technical Assistance.** Parties requiring technical  
15                  assistance concerning the CM/ECF system, such as the procedures for  
16                  filing non-scannable exhibits, shall consult the District's "Electronic  
17                  How To" page (<https://www.waed.uscourts.gov/electronic-how>) or  
18                  contact the CM/ECF Help Desk by phone at (866) 236-5100 or (509)  
19                  458-3410 or by email at [ecfinfo@waed.uscourts.gov](mailto:ecfinfo@waed.uscourts.gov). Inquiries  
20

1 requesting technical assistance concerning the CM/ECF system shall  
2 not be directed to the Judge's chambers.

3 **12. Motions Practice**

4 **A. *Generally.*** All motions shall either be: a) noted for hearing  
5 without oral argument fourteen (14) days after filing, or b)  
6 noted for hearing with oral argument at the pretrial conference  
7 pursuant to Local Criminal Rule 12(c). Responses and replies  
8 to motions must be filed in accordance with Local Criminal  
9 Rule 45 and 47, which incorporate the requirements of Local  
10 Rule 7.1.

11 **B. *Expedited Hearing.*** Any party seeking an expedited hearing  
12 on a time-sensitive matter must comply with Local Criminal  
13 Rule 12(c)(3).

14 **C.** If a case has more than one defendant, the Court will construe  
15 any motion, including motions to continue, as applying to *all*  
16 defendants, unless that defendant indicates they do not wish to  
17 be joined in the motion. **Defendants thus do not need to file**  
18 **motions to join. Any Defendant wishing to opt-out of a**  
19 **motion shall file a notice so stating within seven days of the**  
20 **filing of the motion.**

1           **D.    *Sealed Documents.*** Any and all sealed documents shall be  
2           filed by the parties under the sealed event as a sealed document.  
3           The parties are not required to file a separate motion to seal a  
4           document. The parties shall file any objections to a sealed  
5           document by no later than five days after the filing of the sealed  
6           document. The Court will thereafter review the sealed  
7           document and any objections filed to determine whether the  
8           document should be unsealed. Any party filing a sealed  
9           document shall email [dimkeorders@waed.uscourts.gov](mailto:dimkeorders@waed.uscourts.gov) to  
10          inform the Court of the filing. The email shall note the ECF  
11          number of the sealed document and the general nature of the  
12          document.

13       **13.   Witness Testimony.** At any hearing, including trial, in which witness  
14       testimony is given, the witness must testify in Court. Absent  
15       exceptional circumstances, a testifying witness may not appear by  
16       telephone or video conference.

17       **14.   Trial Continuances**

18       **A.    *Motion Deadline.*** All motions to continue the trial must be  
19       heard before or at the pretrial conference. **Any motion to**  
20       **continue trial made after the pretrial conference has**



**occurred will not be granted absent exceptional  
circumstances.**

**B. *Statement of Reasons.*** If the Defendant seeks a continuance, a Speedy Trial Waiver and Statement of Reasons in support of the motion to continue must be filed contemporaneously with the motion.<sup>2</sup> The Statement of Reasons must 1) be signed by the Defendant, 2) be signed by a certified translator, if applicable, and 3) indicate the latest date upon which Defendant is willing to proceed to trial.

**C. *Procedure.*** Before filing a motion to continue, counsel shall first contact the Courtroom Deputy at (509) 458-5252 to obtain new pretrial conference and trial dates consistent with the length of the requested trial continuance. Thereafter, counsel shall confer with opposing counsel regarding case management

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<sup>2</sup> The Court's Speedy Trial Waiver and Statement of Reasons form can be found at the following link:

<https://www.waed.uscourts.gov/sites/default/files/forms/Speedy%20Trial%20Waiver%20MKD.docx>

1 deadlines<sup>3</sup> consistent with the new pretrial conference and trial  
2 date. **All motions to continue must include proposed case**  
3 **management deadlines (either joint or individual) to ensure**  
4 **the to-be-imposed deadlines are best suited to this case.**

5 **15. Pretrial Conference**

6 **A.** The Pretrial Conference is **SET** for **May 5, 2022**, at **1:30 PM**  
7 in **RICHLAND**. At this hearing, the Court will hear **ALL**  
8 pretrial motions that are noted for oral argument.

9 **B.** All pretrial conferences are scheduled to last no more than  
10 **thirty (30) minutes**, with each side allotted **fifteen (15)**  
11 **minutes** to present their own motions and resist motions by  
12 opposing counsel. If any party anticipates requiring longer than  
13 fifteen minutes, that party must notify the Courtroom Deputy at  
14 least seven (7) days prior to the hearing. **Any party who fails**  
15 **to provide this notice will be limited to fifteen (15) minutes.**

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16 <sup>3</sup> A form with the Court's standard case management deadlines can be found at the  
17 following link:

18 [https://www.waed.uscourts.gov/sites/default/files/forms/Proposed%20Case%20Ma](https://www.waed.uscourts.gov/sites/default/files/forms/Proposed%20Case%20Management%20Deadlines%20Form%20-%20MKD.pdf)  
19 [nagement%20Deadlines%20Form%20-%20MKD.pdf](https://www.waed.uscourts.gov/sites/default/files/forms/Proposed%20Case%20Management%20Deadlines%20Form%20-%20MKD.pdf)  
20

1           **C.**    If a motion is to be heard with oral argument, and a party plans  
2                   to call witnesses or present exhibits, that party must file an  
3                   exhibit and/or witness list by no later than **72 hours** before the  
4                   hearing on the motion.

5           **D.**    If a party intends to use a laptop, thumb drive, or DVD or CD  
6                   for presentation of documents, or audio or video recordings,  
7                   that party must contact the Courtroom Deputy at least **one week**  
8                   prior to the hearing and confirm the compatibility of the  
9                   technology and equipment.

10          **E.**    If a party intends to use a demonstrative exhibit, such as a  
11                   PowerPoint presentation, it must be submitted to the Court and  
12                   all opposing parties at least **24 hours** prior to its intended use.

13          **16. Exhibit Lists**

14          **A.**    On **May 17, 2022**, after conferring with counsel at the pretrial  
15                   conference each party shall file a list of exhibits the party  
16                   intends to introduce at trial. Each party shall also email copies  
17                   of their exhibit list to the Court at  
18                   [DimkeOrders@waed.uscourts.gov](mailto:DimkeOrders@waed.uscourts.gov).

The parties shall provide their exhibit list in the following format:

Ex. #	Admitted	Description
1		Photograph of items seized
2		Aerial video surveillance from 1/1/2011. Start Time: 01:03:23 End Time: 01:09:54

Exhibit lists shall include a unique exhibit number and a brief description of the exhibit. For all exhibits consisting of an audio or video file, the exhibit list must designate the precise beginning and ending time indexes of the portion of the file the party intends to use at trial.

**B.** The United States shall consecutively number their exhibits from **1 to 999**. In single-defendant cases, Defendant shall consecutively number exhibits from **1000 to 1999**; in multi-defendant cases, Defendants shall consecutively number exhibits from x000 to x999, substituting “x” for each Defendant’s assigned case identifier (e.g. Defendant 3 would number exhibits from 3000 to 3999, etc.). Exhibits shall be pre-marked for identification before trial commences.

**17. Witness Lists.** On **May 17, 2022**, after conferring with counsel at the pretrial conference, each party shall file and serve a list of witnesses that party intends to call to testify at trial. **The witness list must**

1 identify the existence, but need not include the name, of any  
2 confidential information (CI) the USAO intends to call to testify.

3 Parties shall email copies of their witness list to the Court at  
4 [DimkeOrders@waed.uscourts.gov](mailto:DimkeOrders@waed.uscourts.gov).

5 **18. Trial Briefs, Proposed Jury Instructions and Verdict Form, and**  
6 **Requested Voir Dire.** On May 13, 2022, after conferring with  
7 counsel at the pretrial conference, each party shall file a trial brief,  
8 proposed jury instructions and verdict form, and requested voir dire,  
9 in accordance with the requirements below. Each party shall email  
10 copies to the Court at [DimkeOrders@waed.uscourts.gov](mailto:DimkeOrders@waed.uscourts.gov).

11 **A. Trial Briefs.** Trial briefs shall not exceed twenty (20) pages  
12 without prior Court approval, upon motion and good cause  
13 shown.

14 **B. Proposed Jury Instructions and Verdict Form.** Jury  
15 instructions shall 1) address issues that are unique to the case,  
16 and 2) include instructions regarding the elements of each  
17 charge or defense. If a Ninth Circuit Model Jury Instruction  
18 exists for a particular charge or defense, the parties shall  
19 provide the model instruction or shall submit argument as to  
20 why the instruction is inadequate or no longer supported by

1 law. Proposed jury instructions shall be accompanied by a  
2 proposed verdict form. **The parties must confer to develop**  
3 **joint proposed jury instructions and the verdict form.** The  
4 Court will only accept an individual party's proposed jury  
5 instructions on those points/issues upon which the parties could  
6 not agree, and only if the party's memoranda accompanying the  
7 individually-proposed instruction(s) sets forth the legal  
8 authority and justification for why the instruction is necessary.

9 **C. *Requested Voir Dire.*** The parties may request that the Court  
10 include specific questions during the Court's standard voir dire.  
11 Requested voir dire shall not duplicate information elicited in  
12 the Clerk's Office Jury Questionnaire ("COJQ") and the  
13 Court's Criminal Jury Trial Procedures Letter.

14 **19. Exhibit Binders.** On May 17, 2022, after conferring with counsel at  
15 the pretrial conference, each party must provide to all other parties  
16 and to the Court a Bates-stamped copy of all trial exhibits — or, in the  
17 case of physical exhibits, a photograph or other reproduction of the  
18 exhibit — the party intends to introduce at trial. All trial exhibits shall  
19 be organized sequentially by exhibit number in a three-ring binder.  
20

1           **20. JERS.**

2           **A.** The Court utilizes the Jury Evidence Recording System (JERS),  
3 a system that makes electronic evidence available in the jury  
4 room during deliberations. **Counsel shall promptly consult**  
5 **the Court’s “JERS Instructions for Attorneys”<sup>4</sup> to ensure**  
6 **they acquire, retain, and provide evidence to the Court in**  
7 **the necessary format.**

8           **B.** On **May 17, 2022**, after conferring with counsel at the pretrial  
9 conference, each party who intends to introduce evidence at  
10 trial must supply a CD, DVD, or USB drive to the Courtroom  
11 Deputy containing all of that party’s exhibits in the required  
12 format. Counsel may contact the Courtroom Deputy at (509)  
13 458-5252 with any questions.

14           **21. Trial Notices.** On May 13, 2022, after conferring with counsel at the  
15 pretrial conference, each party shall file a notice that indicates the  
16 amount of time requested for opening statement and for voir dire. In  
17

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18           <sup>4</sup> This document can be found on the Court’s public website at the following link:  
19 [https://www.waed.uscourts.gov/sites/default/files/support/jers\\_basics\\_for\\_lawyers.](https://www.waed.uscourts.gov/sites/default/files/support/jers_basics_for_lawyers.pdf)  
20 [pdf](https://www.waed.uscourts.gov/sites/default/files/support/jers_basics_for_lawyers.pdf)

addition, defense counsel must indicate if his/her client waives presence at sidebar and jury questions.

**22. Technology Readiness Meeting.** On **May 17, 2022**, any party seeking to offer video or audio evidence at trial must meet with Court staff at the location of the trial to verify compatibility with the Court's presentation systems. The parties shall contact the Courtroom Deputy at (509) 458-5252 to arrange this meeting.

**23. Trial.** The jury trial is **SET** for **May 23, 2022**, at **9:00 AM** in **Richland, Washington**. The **final pretrial conference** will commence at **8:30 AM** on the first day of trial.

**24. Summary of Deadlines**

<b>All pretrial motions, including discovery motions, <i>Daubert</i> motions, and motions <i>in limine</i>, filed</b>	<b>March 31, 2022</b>
<b>Responses to pretrial motions</b>	<b>April 14, 2022</b>
<b>Replies to pretrial motions</b>	<b>April 22, 2022</b>
<b>PRETRIAL CONFERENCE</b> <b><i>Deadline for motions to continue trial</i></b>	<b>May 5, 2022</b> <b>1:30 PM - RICHLAND</b>
CIs' identities and willingness to be interviewed disclosed to Defendant (if applicable)	<b>May 9, 2022</b>
Grand jury transcripts produced to Defendant	
Case Agent:	<b>May 9, 2022</b>
CIs:	<b>May 9, 2022</b>
Other Witnesses:	
Exhibit lists filed and emailed to the Court	<b>May 17, 2022</b>
Witness lists filed and emailed to the Court	<b>May 17, 2022</b>
Trial briefs, jury instructions, verdict forms, and requested voir dire filed and emailed to the Court	<b>May 13, 2022</b>



Exhibit binders delivered to all parties and to the Court	<b>May 17, 2022</b>
Delivery of JERS-compatible digital evidence files to the Courtroom Deputy	<b>May 17, 2022</b>
Trial notices filed with the Court	<b>May 13, 2022</b>
Technology readiness meeting (in-person)	<b>May 17, 2022</b>
<b>FINAL PRETRIAL CONFERENCE</b>	<b>May 23, 2022</b>
<b>JURY TRIAL</b>	<b>May 23, 2022</b> <b>9:00 AM - RICHLAND</b>

**25.** A Waiver of Speedy Trial Rights, accompanied by a Statement of Reasons, has been signed and filed by each Defendant. **ECF Nos. 105, 112, 113.** All time from the current trial date of **March 14, 2022**, to the new trial date of **May 23, 2022**, is **EXCLUDED for all Defendants** for speedy trial calculations pursuant to 18 U.S.C. § 3161(h)(7).

**26.** All time from the filing of Defendants' Motion to Continue on **January 24, 2022**, to the date of the hearing on **February 14, 2022**, is excluded for speedy trial calculations pursuant to 18 U.S.C. § 3161(h)(1)(D).

**IT IS SO ORDERED.** The Clerk's Office is directed to enter this Order and provide copies to all counsel, the U.S. Probation Office, and the U.S. Marshals Service.

DATED February 16, 2022.

*s/Mary K. Dimke*  
MARY K. DIMKE  
UNITED STATES DISTRICT JUDGE